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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1951.

No. 458

BROTHERHOOD OF RAILROAD TRAINMEN, an Unincorporated Association, and C. O. CARNAHAN, General Chairman, Brotherhood of Railroad Trainmen,
Petitioners,

vs.

SIMON L. HOWARD, SR., and ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, a Corporation,
Respondents.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit.

WAYLAND K. SULLIVAN,
Cleveland, Ohio,
W. DONALD DUBAIL,
CHARLES R. JUDGE,
Louderman Building,
St. Louis, Missouri,
Counsel for Petitioners.

ST. LOUIS LAW PRINTING CO., 415 North Eighth Street. CEntral 4477.

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vs.

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Respondents.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit.

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit entered in cause No. 13899, entitled Simon L. Howard, Sr., Appellant, v. St. Louis-San Francisco Railway Company et al., Appellees, and in cause No. 13900, entitled St. Louis-San Francisco Railway Company, Appellant, v. Simon L. Howard et al., Appellees, on September 11, 1951.

OPINIONS BELOW.

The opinion of the District Court (R. 267) is reported in 72 F. Supp. 695. The opinion of the Court of Appeals (R. 339) is reported in 191 F. (2) 442.

JURISDICTION.

The judgment of the Court of Appeals was entered on September 11, 1951 (R. 352). The jurisdiction of this Court is invoked under 28 U. S. C., section 1254 (1).

QUESTIONS PRESENTED.

1. Whether the court has jurisdiction to resolve the jurisdictional dispute herein between the crafts of railroad brakemen and train porters over the right to the performance of certain braking job functions, and to construe and interpret a bargaining agreement relative thereto entered into by the carrier management and the recognized representatives of the craft of brakemen; or whether the jurisdiction of the administrative bodies under the Railway Labor Act over this and similar disputes is exclusive.

2. Whether the crafts of railroad brakemen and train porters, long considered by the carrier and by the crafts themselves as separate and distinct, can by judicial decree be consolidated into a single craft because of the similarity in part of the job functions performed by each; and whether, under the Railway Labor Act, the court can require the representative of the brakemen's craft to represent the craft of train porters notwithstanding the fact that train porters have long maintained their own craft representatives and negotiated their own bargaining agreements and even though prior hereto no question has ever arisen as to any right or obligation of the brakemen's representative to do so.

3. Whether the court, upholding the right of the National Railroad Adjustment Board to approve the claim of the craft of railroad brakemen to work generally recognized as brakemen's duties, may grant injunctive relief against an agreement to discontinue giving said work to train porters on the ground that the negotiations for said agreement were aided by the use of economic pressure; or whether a labor craft has any right to choose which of two legal means will be employed for the vindication of its claim.

4. Whether the injunction ordered by the Court of Appeals would violate the Norris-LaGuardia Act, this being a labor dispute; and whether it would violate the rule that plaintiffs have an adequate remedy.

STATUTES INVOLVED.

The applicable statutes are the Railway Labor Act, 48 Stat. 1185, 45 U. S. C., Sec. 151, and the Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C., Sec. 101. Pertinent provisions are printed in Appendix A, p. 15.

STATEMENT.

Respondent, Simon Howard, as representative of the craft of train porters employed by the St. Louis-San Francisco Railway Co., brought this action to enjoin the carrying out of an agreement entered into March 7, 1946, between the Brotherhood of Railroad Trainmen, as representative of the craft of brakemen, and the railroad. This agreement provides:

> "Effective April 1, 1946, the practice of train porters performing work generally recognized as brakemen's duties will be discontinued" (R. 222).

Train porters and brakemen have been for many years recognized by the carrier as separate crafts (R. 284). Each

has its own bargaining representative. Each has its agreements with the carrier covering rates of pay, rules and working conditions (R. 231, 285). The work of train porters covered both care of passengers and head end braking on passenger trains. During the war the carrier employed chair car porters, whose sole duty was the care of passengers and thereafter head end braking constituted the major part of train porters' work (R. 19, 122).

A dispute had existed for many years over the performance of braking duties by train porters, the brakemen claiming this work belonged to them (R. 286). This dispute became one of 12 issues in a strike ballot circulated by the Brotherhood of Railroad Trainmen in December, 1945, and resulted in the agreement set forth above (R. 192). Following this agreement the railroad gave notice to individual train porters that it would, on April 1, 1946, discontinue the position of train porters (R. 49).

After a trial of the issues, the district court held that the dispute here was a jurisdictional one which it was without jurisdiction to decide, exclusive jurisdiction being vested in the administrative agencies created by the Railway Labor Act. It further held that the failure of the carrier to give 30 days notice to train porters of the discontinuance of their positions violated section 2, seventh, and section 6 of the Railway Labor Act and therefore enjoined enforcement of the notices terminating these positions (R. 288).

The Court of Appeals held that where a dispute between crafts results in one of them being eliminated from the service of the employer it is not a jurisdictional dispute such as is governed by Order of Railway Conductors v. Pitney, 326 U. S. 561, and Slocum v. Delaware, L. & W. R. Co., 339 U. S. 239 (R. 342-3). The decision of the Court of Appeals was that the agreement of March 7, 1946 must be construed to effect a consolidation of the crafts of

brakemen and train porters. The parties were enjoined from giving this agreement any other effect, the railroad was ordered to recognize the seniority of the individual members of the consolidated craft in accordance with their service status, and the Brotherhood of Railroad Trainmen was ordered to act as statutory representative of the train porters (R. 350-1).

SPECIFICATIONS OF ERRORS TO BE URGED.

The Court of Appeals erred:

1. In holding the controversy involving the claims of two separate crafts of railroad employees to disputed job functions to be justiciable.

2. In construing an agreement between brakemen and the carrier to effect a consolidation of the crafts of brakemen and train porters, in construing said agreement with respect to seniority rights of the individual members of the two crafts, and in ordering the Brotherhood of Railroad Trainmen to act as statutory representative of the previously separate craft of train porters.

3. In imposing working conditions of its own invention on the parties through the subterfuge of construing the said agreement in a manner not intended or contemplated by the parties thereto.

4. In denying to a labor organization the right to use economic pressure by denying to it the intended result of an agreement resulting therefrom.

5. In granting an injunction in a labor dispute and where the complaining party had not exercised the administrative remedies provided by the Railway Labor Act.

6. In failing to affirm the judgment of the district court.

REASONS FOR GRANTING WRIT.

Writ of certiorari is sought here because the decision of the Court of Appeals violates federal policy as established by Congress and the decisions of this court and is in direct conflict with decisions of this court. The questions raised are of great importance because the decision determines that (a) courts have jurisdiction to decide a jurisdictional railroad labor dispute; (b) working conditions of railroad labor may be fixed and regulated by decree of court; (c) a labor agreement may be invalidated for the reason that it results from the use of economic pressure by a labor organization; and (d) an injunction may issue in a labor dispute without regard to the conditions imposed on injunctive relief by the Norris-LaGuardia Act.

I.

The dispute presented to the court in this case was one involving two crafts of railroad employees, brakemen and train porters. Each had, for many years, claimed the right to do head end braking on passenger trains, duties which are admittedly functions of the brakemen's craft (R. 3). In March, 1946, the brakemen's representative, the Brotherhood of Railroad Trainmen, and the carrier agreed that "the practice of train porters performing work generally recognized as brakemen's duties would be discontinued." Following this, the carrier notified train porters that their positions would be discontinued.

This, plainly, constituted a jurisdictional dispute.[1]

It has been consistently held by this court and the lower courts that, by reason of the Railway Labor Act, a jurisdictional dispute on the railroads does not present a jus-

1 This very dispute was held to be a jurisdictional dispute by the Supreme Court of Missouri in a companion case. State ex rel. St. L. S. F. Ry. Co. v. Russell, 358 Mo. 1136, 219 S. W. (2) 340, cert. den. 338 U. S. 849.

ticiable controversy. In General Committee, B. of L. E. v. Missouri, K. T. R. Co., 320 U. S. 323, it was so held with respect to a dispute involving the right of representation.

In Order of Railway Conductors v. Pitney, 326 U. S. 561, and in Slocum v. Delaware, L. & W. R. Co., 339 U. S. 239, jurisdiction of the courts was again denied in jurisdictional disputes involving the conflicting claims of separate crafts to certain work. It was there held that the National Railroad Adjustment Board, created by section 3, first, of the Railway Labor Act, had exclusive jurisdiction over the interpretation of agreements, necessary to the determination of the claims of the conflicting crafts.

The decision here is in direct conflict with General Committee v. B. of L. E., supra; Order of Railway Conductors v. Pitney, supra, and Slocum v. Delaware, L. & W. R. Co., supra.

The Court of Appeals sought to distinguish this case from Pitney and Slocum because the agreement between the brakemen's representative and the carrier here resulted in the discontinuance by the carrier of the position of train porter. Thus, according to the decision, the issue of judiciability would depend, not on the existence of a jurisdictional dispute, but on such wholly extraneous matters as the relative importance of the disputed work to one of the crafts or upon the discretionary action of the employer in retaining or discontinuing the employment of one of the crafts.[2]

In Pitney and Slocum it was pointed out that courts should not interpret railway labor agreements because the

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2 In Missouri-Kansas-Texas R. Co. v. Randolph (8th Cir.), 164 F. (2) 4, a dispute between brakemen and train porters was held not justiciable where the carrier elected to take braking duties away from train porters but to retain them as employees. Here, where the carrier sought to discontinue the position of train porters, the dispute is held to be justiciable. Thus, in similar disputes involving the same crafts and the same disputed job functions, the same court arrives at different conclusions with respect to justiciability.

National Railroad Adjustment Board, an administrative agency peculiarly fitted to perform such a function, had exclusive jurisdiction to so do. There is nothing to indicate that the exclusive character of the Adjustment Board's jurisdiction is dependent on the number of men who may or may not lose jobs as a result of the dispute. Nor is a court in any better position to construe an agreement simply because a whole craft, rather than just part of a craft, loses work.

On the facts presented here the court held it had jurisdiction to decide the jurisdictional dispute before it. The decision necessarily determines, therefore, that jurisdictional disputes are justiciable, judicia discretion alone controlling whether relief shall be granted and what relief shall be granted. Utter confusion on the issue of justiciability and a flood of litigation will inevitably follow this decision.

II.

The decision here construes the agreement between the carrier and the Brotherhood of Railroad Trainmen as effecting a consolidation of the crafts of brakemen and train porters. It enjoins the parties from giving to this agreement any effect other than that decreed. It provides the manner in which seniority of the individual members of the consolidated craft shall be recognized and requires the Brotherhood of Railroad Trainmen to act as statutory bargaining representative of the previously separate craft of train porters.

The parties obviously may not bargain collectively or agree upon the subject matter of the dispute in any manner except as decreed by the court. Since, admittedly, the parties have not in fact agreed upon the consolidation of the two crafts, or on the matters of seniority or representation, it is plain that the court is imposing on the parties,

employer and employee alike, working conditions of its own invention.

In Terminal Railroad Association v. Brotherhood of Railroad Trainmen, 318 U. S. 1, it was held that the Railway Labor Act did not provide for governmental regulation of rates of pay, rules or working conditions, but was, rather, intended to encourage agreement. In keeping with this holding is the public policy of the United States, as declared in the Norris-LaGuardia Act (Sec. 2, 47 Stat. 70; 29 U. S. C. A., section 102), recognizing the right of each worker "to negotiate the terms and conditions of his employment."

To the extent that the decision of the court may be said to have been arrived at by construing or interpreting the agreement it is in direct conflict with Order of Railway Conductors v. Pitney, 326 U. S. 561, and Slocum v. Delaware, L. & W. R. Co., 339 U. S. 239, holding that courts are without jurisdiction to interpret railway labor contracts.

To the extent that the working conditions imposed on the parties by the court were determined independently of and without regard to anything contained in the agreement, it is clearly in direct conflict with the Terminal Railroad Association case, supra.

Admittedly, train porters perform many functions constituting brakemen's duties. This fact alone, however, cannot authorize a court to consolidate the two crafts unless courts have jurisdiction generally to regulate and fix working conditions of railroad employees. As an example of the practical dangers inherent in the assumption of jurisdiction by the court is the fact that train porters may, under this decision, exercise their seniority in freight service, paying a higher rate of pay, even though they will not have had a single day's experience as a freight brakeman.

The decision respecting seniority obviously affects the rights and changes the working conditions of many persons employed by the carrier as brakemen and as train porters. The ultimate effect of this order cannot be foretold from the record for the reason that the court had before it neither evidence nor findings of fact to guide it in its decision. It is a wholly arbitrary order.

The decision requiring petitioners to act as statutory bargaining representative of train porters, despite the existence of an organization representing train porters and having agreements with the carrier, is plainly in conflict with General Committee, B. of L. E. v. M.-K.-T. R. Co., 320 U. S. 323, previously referred to, holding that courts may not decide representation questions.

The jurisdiction assumed by the court to impose working conditions of its own making on labor, to consolidate crafts, to arbitrarily tamper with seniority rights of individuals, and to decide questions of representation, is far beyond the authority of courts as that authority has heretofore been understood. If such authority exists, and if a court may substitute its judgment for agreement, the Railway Labor Act has been nullified and the naked right of labor to organize and bargain collectively can avail it nothing.

III.

The decision here presents the paradox that what is lawful as the result of an award of the National Railroad Adjustment Board is not lawful when accomplished by agreement. Thus, the decision permits the brakemen to take to the Adjustment Board their claim to the head end braking work now done by train porters based on their earlier agreements with the carrier. In the event of a favorable award by the Board the injunction against giving to the agreement of March 7, 1946 any effect except as consoli-

dating the crafts may be set aside (R. 351). In such event, and based on such an award, the taking of braking duties from train porters would be proper.

Yet this same result, accomplished by the agreement of March 7, 1946, is enjoined as an "artificial interference" with the employment rights of train porters. Thus, the decision makes it compulsory to submit disputes to the National Railroad Adjustment Board and it prohibits settlement in any other manner. That the Railway Labor Act is not to be so construed, but is rather to be considered as providing means to supplement "self help" is clear from several decisions of this court with which the decision here is in conflict. General Committee, B. of L. E., v. Missouri, K. T. R. Co., 320 U. S. 323, 332; Switchmen's Union v. National Mediation Board, 320 U. S. 297, 302; Elgin, J. & E. R. Co. v. Burley, 325 U. S. 711, 727.

While the reason for this odd result is not expressly stated, the repeated reference to the agreement of March 7, 1946, as an "exacted" agreement has significance as reflecting the only reason for this decision. That reason is that the agreement resulted from economic pressure and strike threat and therefore, in the view of the court, should not be given effect.

No other reason can exist for the court's action. The object of the agreement is obviously lawful, for otherwise the same result could not follow from an award of the National Railroad Adjustment Board. And, even though the claims of brakemen to the disputed work were without foundation in prior agreements,[4] an agreement giving them that work would clearly be valid and lawful.[5] Un-

[4] The disputed work performed by train porters admittedly are brakemen's duties. In the agreement of March 7, 1946, the carrier agreed to pay time claims of certain brakemen available on August 2, 1945, thus recognizing that the claims of brakemen were based on prior agreements.

[5] "The members of a labor union may thus singly or in a body leave the services of their employers in order to * * * secure for themselves all the work of their trade." 56 C. J. S., p. 153; Senn v. Tile Layers Protective Union, 301 U. S. 468.

less the existence of a strike threat renders the resulting agreement unlawful, there can be no valid grounds for not giving effect to the agreement here in accordance with the understanding of the parties to it.

Without pursuing the point at length, we submit:

1. The right to strike and to exert economic pressure for lawful purposes has not, by law, been denied labor, but has been recognized by Acts of Congress.[6]

2. The Railway Labor Act provides procedures to prevent interruptions to commerce, but it does not make unlawful strikes or strike threats.[7]

3. Resort to the appropriate division of the Adjustment Board is not made compulsory by the Railway Labor Act nor a compulsory substitute for direct action.[8]

4. Collective bargaining agreements resulting from economic pressure, strike threats or strikes are not thereby rendered invalid.

If courts may enjoin the carrying into effect of collective bargaining agreements because they result from economic pressure, it is obvious that the rights guaranteed to labor, the right to organize and to bargain collectively, are without meaning.

IV.

The judgment to be entered in accordance with the decision of the court of appeals will provide for an injunction enjoining petitioners and the carrier from giving to their

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6 Labor Management Relations Act of 1947, Sec. 101, 61 Stat. 151, 29 U. S. C. A., Sec. 163; National Labor Relations Act, Sec. 13, 49 Stat. 457, 29 U. S. C. A., Sec. 163; Norris-LaGuardia Act, Sec. 4, 47 Stat. 70, 29 U. S. C. A., Sec. 104.

7 Washington Terminal Co. v. Boswell (C. A. D. C.), 124 F. (2) 235, 247, aff'd 319 U. S. 732.

8 Moore v. Illinois Central R. Co., 312 U. S. 630; Washington Terminal Co. v. Boswell (C. A. D. C.), 124 F. (2) 235, 243, aff'd 319 U. S. 732.

agreement any effect except as effecting a consolidation of the crafts.

The Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C., Sec. 101, provides that no court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute except under circumstances specifically provided for and which do not exist here. The definitions of "labor dispute" and "a case involving or growing out of a labor dispute" provided in the statute are so all inclusive as to certainly include the dispute here.[9]

Numerous decisions dealing with the Norris-LaGuardia Act leave no doubt that the Act applies to this dispute. United States v. Hutcheson, 312 U. S. 219, and Milk Drivers' Union v. Lake Valley Products, 311 U. S. 91, involved jurisdictional disputes. New Negro Alliance v. Sanitary Grocery Co., 303 U. S. 552, involved picketing by a negro organization in an effort to require retail stores to employ negroes. Brotherhood of Railroad Trainmen v. Toledo, P. & W. R. Co., 321 U. S. 50, applied the Act to a railway labor dispute. The decision here conflicts in principle with each of these cases.

In Brotherhood of Railroad Trainmen v. Toledo, P. & W. R. Co., supra, it was held that the failure of the carrier to voluntarily submit to arbitration under the Railway Labor Act precluded its right to injunctive relief under the Norris-LaGuardia Act. In Order of Railway Conductors v. Pitney, 326 U. S. 561, the same results were obtained on general equitable principles without considering the Norris-LaGuardia Act. There it was held that until the conductors had applied to the National Railroad Adjustment Board for an interpretation of their agreements with the carrier with respect to the disputed jobs they

9 Norris-LaGuardia Act, Sections 13 (a) and 13 (c); Appendix A.

could not show "irreparable loss and inadequacy of the legal remedy."

Thus, whether one looks to the Norris-LaGuardia Act or to general equitable principles, the granting of injunctive relief in this case is improper and a dangerous precedent. The district court applied the Pitney decision, and stayed proceedings for a sufficient time for the train porters to either apply to the Adjustment Board for an interpretation of their agreements with the carrier, or to apply to the National Mediation Board for a determination of their claim that they were entitled to representation by the Brotherhood of Railroad Trainmen and for reclassification as brakemen. The district court properly applied the law and its judgment should have been affirmed.

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

WAYLAND K. SULLIVAN,
Cleveland, Ohio,

W. DONALD DUBAIL,

CHARLES R. JUDGE,
Louderman Building,
St. Louis, Missouri,
Counsel for Petitioners.

APPENDIX A.

Railway Labor Act, 45 U. S. C., sec. 151, section 3, First (i):

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

Norris-LaGuardia Act, 29 U. S. C., sec. 101, section 1:

"No court of the United States, as defined in sections 101-115 of this title, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of such sections; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in such sections. Mar. 23, 1932, c. 90, sec. 1, 47 Stat. 70."

Norris-LaGuardia Act, 29 U. S. C., sec. 101, section 13 (a):

"(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft,

or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as defined in this section) of 'persons participating or interested' therein (as defined in this section)."

Norris-LaGuardia Act, 29 U. S. C., sec. 101, Section 13 (c):

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."